

## **REMARKS**

The present Remarks are in response to the Examiner's Office Action mailed May 17, 2006. Claims 16-24 have been withdrawn by the Examiner as being directed to an unelected invention. Claims 1-15 are now pending in the application in view of the aforementioned withdrawals.

Reconsideration of the application is respectfully requested in view of the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

### **I. General Considerations**

Applicant notes that the remarks presented herein have been made merely to clarify the claimed embodiments from elements purported by the Examiner to be taught by the cited references. Such remarks, or a lack of remarks, are not intended to constitute, and should not be construed as, an acquiescence, on the part of the Applicant: as to the purported teachings or prior art status of the cited references; as to the characterization of the cited references advanced by the Examiner; or as to any other assertions, allegations or characterizations made by the Examiner at any time in this case. Applicant reserves the right to challenge the purported teaching and prior art status of the cited references at any appropriate time.

In addition, the remarks herein do not constitute, nor are they intended to be, an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed herein are presented solely by way of example. Consistent with the foregoing, the discussion herein is not intended, and should not be construed, to prejudice or foreclose contemporaneous or future consideration, by the Applicant, of additional or alternative distinctions between the claims of the present application and the references cited by the Examiner, and/or the merits of additional or alternative arguments.

### **II. Election/Restriction Requirement**

Pursuant to the agreement made between the Examiner and R. Burns Israelsen during the April 25, 2006 telephone conversation, Applicant hereby confirms its election without traverse of Group I, claims 1-15. Notwithstanding the foregoing, Applicant notes that while the election confirmed herein is made without traverse, the mere fact that no traverse is made should not be

construed as an assessment or judgment by the Applicant as to the merits, if any, of: the characterization of the claims and inventions advanced by the Examiner in the restriction/election of species requirement set forth in the Office Action; or, any other assertions, allegations, statements or characterizations made by the Examiner in that restriction/election of species requirement.

### **III. Rejection Under 35 U.S.C. §102(b)**

Applicant respectfully notes that a claim is anticipated under 35 U.S.C. § 102(b) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Further, the identical invention must be shown in as complete detail as is contained in the claim. Finally, the elements must be arranged as required by the claim. *Manual of Patent Examining Procedure ("MPEP") § 2131.*

#### **a. rejection of claims 1-3, 5-10, 12, and 14-15**

The Examiner has rejected claims 1-3, 5-10, 12, and 14-15 under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 5,668,663 to Varaprasad et al. ("*Varaprasad*"). Applicants respectfully disagree.

With reference to independent claims 1 and 8, the Examiner has alleged that *Varaprasad* discloses "Between the conductive electrodes, an electrochromic material layer and an electrolyte material layer (the combined electrochromic layer/electrolyte layer form Applicant's attenuation layer) are formed (column 7, lines 53-64) ... electrolyte material is comprised of redox reaction promoters and alkali ions and/or protons wherein one of the alkali ions may be lithium methacrylate (photopolymerizable element) (columns 8-10, lines 56-58) ... meeting the limitations of claims 1 and 8."

Applicant notes, however, that the arrangement purported by the Examiner to be disclosed in *Varaprasad* is not the same as the arrangement recited in claims 1 and 8. Particularly, the Examiner has asserted that "... the combined electrochromic layer/electrolyte layer form Applicant's attenuation layer ..." In contrast, claims 1 and 8 recite "an attenuation layer comprising a layer of ... photopolymerizable monomer mixed with an electrolyte and an electrochromic material ..." *Emphasis added.* Thus, the portions of *Varaprasad* upon which the Examiner relies do not appear to disclose the claimed "attenuation layer."

Additionally, the attenuation layer recited in claims 1 and 8 requires three different components, namely “an electrochromic material,” “an electrolyte,” and “an at least partially curable photopolymerizable monomer.” In an attempt to demonstrate that *Varaprasad* discloses these three elements as they are recited in claims 1 and 8, the Examiner has alleged that *Varaprasad* discloses “an electrochromic layer” and an “electrolyte material layer” which, according to the Examiner, “... together form Applicant’s attenuation layer.” The Examiner then further alleges that the “electrolyte material layer ... is comprised of lithium methacrylate (photopolymerizable element) ...” *Emphasis added*. However, this is simply not the arrangement recited in claims 1 and 8.

Particularly, the Examiner has alleged that *Varaprasad* discloses an “electrolyte layer” that comprises a “photopolymerizable element.” In contrast however, neither claim 1 nor claim 8 recites such an “electrolyte layer.” That is, claims 1 and 8 do not recite an “electrolyte layer” that “comprises” a “photopolymerizable element.” Thus, the reliance of the Examiner on *Varaprasad* as a basis for rejection of the claims is unavailing.

In light of the foregoing, Applicant respectfully submits that the Examiner has failed to establish that *Varaprasad* anticipates claims 1 and 8, at least because the Examiner has not established that the identical invention is shown in *Varaprasad* in as complete detail as is contained in claims 1 and 8, and because the Examiner has not shown that *Varaprasad* discloses the elements of claims 1 and 8 arranged as required by those claims. Applicant thus respectfully submits that the rejection of claims 1 and 8, as well as the rejection of corresponding dependent claims 2-3, 5-7, 9-10, 12 and 14-15, should be withdrawn.

**b. rejection of claims 1-4 and 7-13**

The Examiner has also rejected claims 1-4 and 7-13 under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 6,193,378 to Tonar et al. (*Tonar*). Applicants respectfully disagree.

Referring to independent claims 1 and 8, the Examiner alleges that *Tonar* discloses an “electrochromic solution [that] also contains polymethylacrylate (photopolymerizable monomer) ...” *Emphasis added*. In contrast however, neither claim 1 nor claim 8 recites such an “electrochromic” component. That is, claims 1 and 8 simply do not recite an “electrochromic solution” that “contains” a “photopolymerizable monomer.” Thus, the reliance of the Examiner on *Tonar* as a basis for rejection of the claims is unavailing.

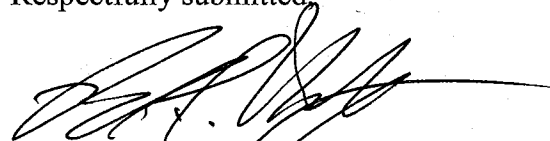
In light of the foregoing, Applicant respectfully submits that the Examiner has failed to establish that *Tonar* anticipates claims 1 and 8, at least because the Examiner has not established that the identical invention is shown in *Tonar* in as complete detail as is contained in claims 1 and 8, and because the Examiner has not shown that *Tonar* discloses the elements of claims 1 and 8 arranged as required by those claims. Applicant thus respectfully submits that the rejection of claims 1 and 8, as well as the rejection of corresponding dependent claims 2-4, 7 and 9-13, should be withdrawn.

**CONCLUSION**

In view of the remarks submitted herein, Applicant respectfully submits that each of the claims 1-15 now pending in this application is in condition for allowance. Therefore, reconsideration of the rejections is requested and allowance of those claims is respectfully solicited. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate the same with the undersigned attorney.

Dated this 18<sup>th</sup> day of September, 2006.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P. F. Malen', with a long horizontal flourish extending to the right.

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